IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 450 OF 1998

State Dadra & Nagar Haveli..... .... Appellant.
(Orig.Complt.)

V/s

Sureshkumar Ramjidas Wadhva & Anr. .. ....
Respondents.

(No.1 Orig.accd.)

Mr.G.R.Agrawal i/by Mr.R.M.Agrawal for the appellant.

Mr.M.S.Mlohite for respondent No.1.

Mrs.P.H.Kantharia, APP for the State.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

21st July, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of acquittal passed by the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa, in Sessions Case No.3 of 1996 on 20.12.1996 the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellant as also the learned Public Prosecutor we have scrutinized the entire evidence on and reappreciated the same.

3. The facts as disclosed on reappreciation of evidence stated briefly are that the accused Sureshkumar and the victim Rajeshkumar were related to each other. The victim Rajeshkumar was brother-in-law of accused Sureshkumar. On 23.6.1995 Rajeshkumar along with his mother and sister Nilam came to reside at Piparia with the accused Sureshkumar and his wife Urmila who was daughter of Rampiyari. On 27.6.1996 Urmila and Nilam went to Jaipur and therefore Sureshkumar had gone to Vapi station to help them embark their journey to Jaipur. He came back in the evening and on that day itself. On that very day after morning breakfast victim Rajeshkumar left the house and never returned. A complaint was lodged, dead body was found, face was burnt. Police on investigation arrested the accused and prosecuted him for murder of Rajeshkumar. The prosecution examined 14 witnesses to prove its case. The entire evidence was circumstantial in nature and the learned trial Judge on appreciation of the same proceeded to acquit the accused. It is this order of acquittal which as aforesaid is impugned in this appeal.

4. The appellant-State contends that the acquittal was wrong and unsustainable in law.

5. We have to appreciate the evidence which is wholly circumstantial in nature to determine whether order of acquittal is correct or requires interference in any manner. The prosecution has successfully proved that Rajeshkumar has met with homicidal death. Question is whether the evidence as it stands on record is adequate to come to a conclusion beyond reasonable doubt that it was the accused Sureshkumar who committed the

crime. We repeat in this there are no eye witnesses and therefore we have to asses the circumstantial evidence. The body as was found was burnt and the face was not identifiable. It was reported by the Sarpanch who has been examined who states that he does not know the person who was dead.

6. The prosecution has examined P.W.8-Rampiyari and P.W.9-Urmila as the witnesses who proved the identity of the corpus. Unfortunately for the prosecution both of them have turned hostile. P.W.8-Rampiyari is the mother-in-law of the accused and P.W.9-Urmila is the wife of the accused. They have failed to identify or state before the Court that the dead body found in the case was that of Rajeshkumar. Even if we assume inspite of their hostility that the dead body is that of the victim Rajeshkumar, there is nothing on record to connect this accused Sureshkumar to the death of Rajeshkumar. Merely because death is homicidal and the accused is related to the victim it cannot be said by any stretch of imagination that he is guilty of murder of Rajeshkumar. The prosecution has miserably failed to prove the following:

(i) that the dead body was that of Rajeshkumar;

(ii) that the accused committed assault on the victim;

(iii) the manner in which the assault was committed;

(iv) the motive for which it is allegedly committed.

7. In our opinion, when no motive is proved, no identity of the corpus is ascertained it is impossible to record conviction and in our opinion, therefore, the learned trial Judge was fully justified in acquitting the accused. We have no hesitation in confirming the said order of acquittal. In the result the

appeal fails and is dismissed.